

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2002

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THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

T.C.No.36 of 1999

The Commissioner of Income-tax,
Madurai. ... Applicant.

-Vs-

M/s.S.Rangasamy Nadar & Co.,
Dindigul. ... Respondent

Reference arising out of the order of Income-tax Appellate
Tribunal, Bench-B, Madras, in ITA.No.4185(Mds)/89, dated 30.5.1997, at the
instance of Revenue.

!For applicant :: Mrs.Pushya Sitharaman.

^For respondent :: No appearance.

:JUDGMENT

(JUDGMENT of the Court was delivered by N.V.BALASUBRAMANIAN,J.)
The respondent herein is a firm and it filed the return of
income on 6.11.1986 claiming that it sustained a loss of Rs.5,27,420/- for the
assessment year 1986-87. The assessing officer lodged the return under
section 139(10) of the Income-tax Act, 1961 (hereinafter referred to as 'the
Act') on the ground that the return was a non-est return and the assessee was
not entitled to the benefit of carry forward of loss for the assessment year
1986-87. The assessee challenged the order of the assessing officer denying
the benefit of carry forward of loss by filing appeal before the Commissioner
of Income-tax (Appeals), Madurai. The Commissioner of Income-tax (Appeals)
held that there was no delay in filing the return by the assessee and the
return filed was within the time prescribed under the Act. He therefore held
that the assessee was entitled to the benefit of carry forward of loss,
particularly, the depreciation loss. He was of the view that the order passed
by the assessing officer was really passed under section 143(3) of the Act and
accordingly, he held that the appeal was maintainable.

2. The Revenue challenged the order of the Commissioner of
Income-tax (Appeals) before the Appellate Tribunal. The Appellate Tribunal
also held that the appeal was maintainable in law. The Appellate Tribunal
also held that the assessee was entitled to the benefit of carry forward of

its business loss. The Appellate Tribunal dismissed the appeal preferred by the Revenue and the order of the Appellate Tribunal is the subject matter of challenge in the tax case and at the instance of the Revenue, the Appellate Tribunal has stated a case and referred the following question of law:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the assessing officer has to entertain the return which was filed belatedly and to allow carry forward of loss for the assessment year 1986-87?"

3. We heard Mrs. Pushya Sitharaman, learned senior standing counsel for the Revenue. We are of the view that the Appellate Tribunal has found as a matter of fact that for the assessment year 1986-87, though the return ought to have been filed on or before 30.6.1986, the assessee applied for extension of time by filing an application in Form No.6 under section 139(10) of the Act seeking extension of time to file the return till 31.12.1986. It was also found by the Commissioner of Income-tax (Appeals) that the assessee applied for extension of time by filing Form No.6 on 10.9.1986 and the return was filed on 6.11.1986.

4. The submission of Mrs. Pushya Sitharaman, learned senior standing counsel is that a contention was raised before the Appellate Tribunal that the assessee has not sought for extension of time for filing the return and therefore, the entire order of the Appellate Tribunal proceeds on the assumption that the assessee has actually applied for the extension of time for filing the return of income. We are unable to accept the submission of the learned senior standing counsel for Revenue as the Appellate Tribunal has found as a matter of fact and recorded the finding that 'it is not disputed that the assessee has applied for extension of time and the return was therefore a valid return filed within the time allowed'. The Revenue has not challenged the said finding. Moreover, it was also found by the Commissioner of Income-tax (Appeals) that the assessee sought for extension of time by filing Form No.6 on 10.9.1986. Therefore the submission of the learned senior standing counsel for the Revenue that the assessee has not sought for extension of time for filing the return is bereft of force and accordingly, it is rejected.

5. The next submission of the learned senior standing counsel is that though the assessee had applied for extension of time, there was no communication from the assessing officer extending the time to file the return and in the absence of any such communication from the assessing officer, the assessee could not presume that time as sought for was granted. We are unable to accept the submission of the learned senior standing counsel for the Revenue. We find that the uniform view taken by several High Courts is that if the assessee has applied for extension of time, when the Income-tax Officer has not rejected the said application and failed to communicate his view on the question of extension of time, it is open to the assessee to presume that the time sought for has been granted to the assessee.

6. This Court in C.I.T. v. TAMIL NADU AGRO INDUSTRIES CORPN. (255 ITR 473) has held that when a request had been made by the assessee for extension of time and the request for time had not been refused, in the absence of such refusal, the assessee was entitled to assume that the time sought for had in fact been granted. In KARAM SINGH v. CIT (110 ITR 726), SUNDERDAS THACKERSAY & BRO S. v. CIT (137 ITR 646) and HARMANJIT TRUST v. CIT (148 ITR 214) the Punjab and Haryana High Court as well as Calcutta

High Court has taken the view that the application for extension of time can be made even after the expiry of the prescribed date and once the application has been preferred, a duty is cast on the Income-tax Officer to intimate the assessee whether its request for extension of time for furnishing the return had been granted or refused. The Courts have also taken the view that if there is no reply within a reasonable time from the Income-tax Officer, the assessee could presume that his request for extension of time had been granted.

7. The same view has been taken by the Bombay High Court in *LACHMAN CHATURBHUI JAVA v. R.N. NITSURE* (132 ITR 631) wherein the Bombay High Court held that if the department chooses not to reply to the assessee's application within the time applied for by the assessee, the time is deemed to be extended as prayed for by the assessee and he would be justified in assuming that his application has been granted by the department. A similar view has been taken by the Punjab and Haryana High Court in *C.I.T. v. SURINDER KUMAR PARMODKUMAR* (193 ITR 71).

8. We are of the view that the ratio of the decision of this Court in *C.I.T. v. TAMIL NADU AGRO INDUSTRIES CORPN.* (255 ITR 473) would apply and following the said decision, we hold that the Appellate Tribunal was right in holding that in the absence of any order passed by the assessing officer on the application for extension of time filed by the assessee, it is open to the assessee to presume that the time sought for by the assessee had been granted. Moreover, it is also relevant to mention here that section 139(10) of the Act came into force only from 1.4.1986. We are of the view that the power to grant extension of time under section 139(3) of the Act was available up to 1.4.1987. Since the application for extension of time was filed on 10.9.1986 and the assessing officer did not choose to reply within the time applied for by the assessee, we hold that it is open to the assessee to presume that the time sought for had been granted by the assessing officer. Under the circumstances, we hold that the Appellate Tribunal was correct in holding that the time sought for by the assessee had been granted and therefore the return filed on 6.11.1986 is within the time limit prescribed under the Act.

9. Moreover, the Central Board of Direct Taxes (CBDT) has considered the difficulties that were faced by the assessee in filing loss return for the assessment year 1986-87 and the CBDT has issued a circular dated 23.9.1986 saying that if a return of loss was filed by the assessee for the assessment year 1986-87 or earlier years within the prescribed period as per the existing provisions the assessee would not be deprived of the benefit of carry forward of loss. The circular was the subject matter of consideration in *SIRIGERI KANAKAPPA SHETTY & SONS v. DY. CIT* (198 ITR 711) wherein the Karnataka High Court considered a similar question and after noticing the circular issued by the CBDT, held that the requirement to file return within the prescribed time is for the benefit of carry forward of loss and therefore the circular would bind the Income-tax Department. The Kerala High Court in *C.I.T. v. PIGMENTS INDIA LTD.* (230 ITR 518) has also held that since section 139(3) of the Act was amended with effect from 1.4.1987, the Income-tax Officer had the power to grant extension of time invoking the power under section 139(3) of the Act for the assessment year 1986-87. The Kerala High Court in *Pigments India Ltd.* case also held that if the return was filed within the time, the assessee was entitled to the benefit of carry

forward of loss.

10. We therefore hold that the return filed by the assessee is within the time prescribed under section 139(3) of the Act and once we hold that the return, though it is a loss return, was filed within the time prescribed, the assessee is entitled to the benefit of carry forward of loss. We therefore hold that the view of the Appellate Tribunal that the assessee was entitled to carry forward of loss for the assessment year 1986-87 does not suffer from any infirmity and the view of the Appellate Tribunal is justified in law. Accordingly, we answer the question of law referred to us in the affirmative, in favour of the assessee and against the Revenue. Since the assessee is not represented, there will be no order as to costs.

Index: Yes

Website: Yes

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To

1. The Assistant Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai 600 090 (five copies with records)

2. The Secretary,
Central Board of Direct Taxes, New Delhi (3 copies)

3. The Commissioner of Income-tax,
Madurai.

4. The Commissioner of Income-tax (Appeals),
Madurai.

5. The Deputy Commissioner of Income-tax,
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